



State of Delaware
Public Employment Relations Board
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FACT-FINDING

(under the Public School Employment Relations Act
14 Del.C. Chapter 40 (1982))

- Fact-finding is a non-binding process by which a qualified impartial third party makes written findings of fact and recommendations for resolution of an impasse.
- All costs of fact-finding are borne equally by the employer and the union.
- If the labor dispute has not settled after three mediation sessions, during which both parties have made a good faith effort to settle their differences, the parties may **jointly or individually petition the PERB to initiate fact-finding**.
- The **mediator** may also inform the PERB that further negotiations between the parties, at that time, are unlikely to be productive and **recommend that fact-finding be initiated**.
- Within **seven (7) days** of receipt of a petition or recommendation for fact-finding, **the PERB must make a determination** (either with or without a hearing) as to:
 - whether a good faith effort has been made by both parties to resolve their labor dispute through negotiations and mediation, and
 - whether the initiation of fact-finding would be appropriate and in the public interest. 14 Del.C. §4015(a)
- A decision by the Executive Director to deny fact-finding can be appealed to the full Public Employment Relations Board, in accordance with the PERB's rules and regulations.
- When the PERB issues its determination that fact-finding is appropriate, it will request from the parties a statement of all unresolved contract.
- If the PERB initiates fact-finding, the parties may, by mutual agreement, select their own fact-finder. 14 Del.C. §4015(b).
- Where the parties have not selected their own fact-finder within seven days of the initiation of fact-finding, the PERB shall submit a list of five (5) qualified fact-finders to the parties.
 - Each party must alternately strike two names from the list.

- The order of striking is determined by lot.
- The individual remaining on the list is the fact-finder. 14 Del.C. §4015 (c).
- If the parties have not notified the PERB within five (5) days of their receipt of the panel of their choice, the PERB shall appoint a fact-finder from the list.
 - However, if only one party strikes its names from the list and the other party fails to do so, the PERB shall appoint the fact-finder from only those names remaining on the list. 14 Del.C. §4015(d)
- The fact-finder must hold a public hearing in order to:
 - define the area or areas of dispute
 - determine facts relations to the dispute
 - render a recommendation on unresolved contract issues 14 Del.C. §4015(e).
- The time, date and place of the hearing is established by the fact-finder. The fact-finder is empowered to administer oaths and issue subpoenas on behalf of the parties or on his/her own behalf. 14 Del.C. §4015(e).
 - The PERB will provide Notices of the Public Fact-finding hearing to be posted by the Employer.
 - The PERB will provide for the recording of the fact-finding hearing and a transcript will be made available at the parties' expense if requested by the fact-finder.
- The fact-finder must make written findings of facts and **recommendations for the resolution of the dispute.** 14 Del.C. §4015(f)
- The fact-finder must specify the basis for the recommendation and must consider the following, in addition to any other relevant factors:
 - *The interests and welfare of the public*
 - *Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the fact-finding proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar services or requiring similar skills under similar working conditions in the same community and in comparable communities and in private employment in the same community and in comparable communities..*
 - *The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.*

Increases in the average weekly wages earned in the private sector within the State as computed by the Department of Labor

- *Stipulations of the parties.*
 - *The lawful authority of the public school employer.*
 - *The financial ability of the public school employer based on existing revenue, to meet the costs of any proposed settlements, provided that, any enhancement to such financial ability derived from savings experienced by such public school employer as a result of a strike shall be not considered by the fact-finder; and further provided that the “certification of available revenue” adopted by the Educational Finance Overview Committee pursuant to Chapter 18 of this Title shall be used by the fact-finder as a true statement of the financial ability of any public school employer covered by Chapter 18 of this title*
 - *Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding or otherwise between the parties, in the public service or in private employment.* 14 Del.C. §4015 (f).
- The fact-finder must serve the **recommendations** on the parties and the PERB **within thirty (30) days of the conclusion of the hearing, but not later than 45 days from the date of appointment.** 14 Del.C. §4015(g).
 - Within **five (5) days of receipt of the recommendations**, the PERB shall convene a meeting including representatives of the parties and the fact-finder for the purpose of discussing whether the parties are able to conclude their labor dispute at that time with a voluntarily reached agreement. 14 Del.C. §4015(h).
 - If the dispute continues, the PERB shall publicize the fact-finder's recommendations along with position statements from the accepting and rejecting parties. 14 Del.C. §4015 (i).

The costs of fact-finding are borne equally by the parties involved in the dispute. 14 Del.C. §4015 (j).

Nothing in the Public School Employment Relations Act shall be construed to prohibit or otherwise impede a public school employer and a union from continuing to bargain in good faith over terms and conditions of employment or from using the services of a mediator at any time during the conduct of collective bargaining. 14 Del.C. §4015(k).

If, at any point in the impasse proceedings invoked under the Public School Employment Relations Act, the parties are able to conclude their labor dispute with a voluntarily reached agreement, the PERB must be notified, and all impasse resolution processes shall be terminated. 14Del.C. §4015(k).